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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,483	11/28/2001	Woodrow W. Pearce	45955/CM/P369	2251
23363 7590 09/11/2007 CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			EXAMINER HYLTON, ROBIN ANNETTE	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 09/11/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/995,483

Applicant(s)

PEARCE, WOODROW W.

Examiner

Robin A. Hylton

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3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-42 and 57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 and 31-42 is/are allowed.
- 6) ☒ Claim(s) 1,3-9,11-19 and 22-30 is/are rejected.
- 7) ☒ Claim(s) 20 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The indicated allowability of claims 1,3-42, and 57 is withdrawn in view of the newly discovered reference(s) to Lepore, Nishioka, and Miller, Jr. et al. Rejections based on the newly cited reference(s) follow.

#### ***Claim Rejections - 35 USC § 112***

2. Claims 27,28 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

It is unclear how to differentiate the circular ridge on the second surface of the disc and the plurality of concentric ridges also on the second surface of the disc.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 8,9,18,19,24, and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by Lepore (US 3,147,876). Groove **18** extends across top wall **17** from a first point to a second point.

5. Claims 1,3,4,5,11,14 -17, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishioka (US 4,036,386). Ridges **17** and **18** each have a slot. (See fig. 2).

6. Claims 18 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller, Jr. et al. (US 3,100,577). The cap has a groove 8 extending beyond tow locations of the bottle rim (Fig. 2).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka in view of Dubach (US 5,257,708).

Nishioka discloses the claimed cap except for the top portion being hingedly coupled to the annular wall. It is noted that protrusions 27 are provided on the liner disc to maintain its engagement with the cap skirt (col. 5, lines 58-65).

Dubach teaches it is known to provide a hinge coupling between the top portion and the annular wall of a cap.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of hingedly coupling the top portion to the annular wall of Nishioka. Doing so allows for removal of the associated container contents without removal of the cap from the associated bottleneck.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lepore in view of Dubach (US 5,257,708).

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Lepore discloses the claimed cap except for the top portion being hingedly coupled to the annular wall.

Dubach teaches it is known to provide a hinge coupling between the top portion and the annular wall of a cap.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of hingedly coupling the top portion to the annular wall of Lepore. Doing so allows for removal of the associated container contents without removal of the cap from the associated bottleneck.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lepore in view of Peters (US 5,542,585).

Lenore discloses the claimed cap except for a movable spout.

Peters teaches it is known to provide a cap having a downwardly depending plug seal and a movable spout.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a movable spout to the cap of Lepore. Doing so allows for removal of the associated container contents without removal of the cap from the associated bottleneck.

11. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka in view of Peters (US 5,542,585).

Nishioka discloses the claimed cap except for a movable spout.

Peters teaches it is known to provide a cap having a downwardly depending plug seal and a movable spout.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a movable spout to the cap of Nishioka. Doing so allows for removal of the associated container contents without removal of the cap from the associated bottleneck.

12. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka.

Nishioka teaches the claimed method except is silent regarding solidifying the liquid to block the pathway through the groove.

The examiner takes Official notice that solidifying the liquid is a function of the property of the liquid material, since it known that a viscous liquid can and does solidify when found in small amounts in a cap groove.

13. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dutt (US 4,560,077).

Dutt discloses the claimed vented bottle cap system except for a disc made of a semi-hard material having a circular ridge on a side opposite the top wall of the cap and a plurality of slots formed across the ridge. Dutt discloses the circular ridge **30 or 32** having a plurality of slots **60** extends from the top wall of the cap.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the circular ridge on a separate disc, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art and to form the disc of a material being at least semi-hard, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

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14. Claims 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishioka. To the degree claim 27 is understandable in view of the rejection under 35 USC 112, 2<sup>nd</sup> paragraph, it is obvious in view of Nishioka.

Nishioka discloses the claimed vented bottle cap system except for a disc made of a semi-hard material having a plurality of circular ridges on a side opposite the top wall of the cap and each having at least slot formed thereacross. Nishioka discloses a plurality of circular ridges **17, 18** each having at least one slot extending from the top wall of the cap.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the plurality circular ridges on a separate disc, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art and to form the disc of a material being at least semi-hard, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claim 28, Fig. 2 illustrates the slot of ridge **17** being radially aligned with the slot of ridge **18**.

15. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lepore.

Lepore discloses the claimed method except is silent regarding solidifying the liquid to block the pathway through the groove.

The examiner takes Official notice that solidifying the liquid is a function of the property of the liquid material, since it known that a viscous liquid can and does solidify when found in small amounts in a cap groove.

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16. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller.

Miller discloses the claimed method except is silent regarding solidifying the liquid to block the pathway through the groove.

The examiner takes Official notice that solidifying the liquid is a function of the property of the liquid material, since it known that a viscous liquid can and does solidify when found in small amounts in a cap groove.

***Allowable Subject Matter***

17. Claims 20 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

18. Claims 10 and 31-42 are allowed over the art of record.

***Conclusion***

19. In view of the new grounds of rejection, this Office action is made non-final.

20. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.



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21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art disclosures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

22. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

23. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have

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questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). ). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH

September 5, 2007

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